

Claimant's Renewed Motion To Strike Expert Reports Of Mitchel A. Woltersdorf, Ph.D., came on for hearing before the Administrative Law Judge on July 16, 1998. In an Order dated July 16, 1998, that is the subject of this appeal, the Administrative Law Judge denied claimant's Motion.

Claimant seeks Appeals Board review of that order, contending the Administrative Law Judge acted improperly because Dr. Woltersdorf destroyed information and raw data from the neuropsychological examination of claimant performed on February 22, and 23, 1996, and produced only a portion of the information and raw data from the neuropsychological examination of claimant performed on May 28, 1997.

Respondent claims the Appeals Board does not have jurisdiction to review the Administrative Law Judge's Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the briefs of the parties, the Appeals Board finds as follows:

Before the Appeals Board discusses the merits of this appeal, it must first address whether it has jurisdiction to review the Administrative Law Judge's July 16, 1998, Order.

This is not an appeal from an order entered pursuant to the preliminary hearing statute found at K.S.A. 1997 Supp. 44-534a. An appeal from a preliminary hearing either must allege that the Administrative Law Judge exceeded his or her jurisdiction or one of the jurisdictional issues listed in K.S.A. 1997 Supp. 44-534a must be raised. This appeal is a result of a hearing held, prior to the final award, on a motion filed by claimant requesting the Administrative Law Judge to strike from the evidence any and all reports prepared by Mitchel A. Woltersdorf, Ph.D., because he allegedly has destroyed or failed to produce information and raw data concerning two neuropsychological examinations of claimant. For the Appeals Board to have jurisdiction to review this order, at this juncture of the proceeding, the appeal would have to be brought pursuant to K.S.A. 1997 Supp. 44-551(b)(1).

The 1997 Kansas Legislature amended K.S.A. 1996 Supp. 44-551(b)(1). Effective July 1, 1997, the amendment changed the jurisdiction of the Appeals Board from reviewing "[a]ll acts, findings, awards, decisions, rulings or modifications of findings or awards made by an administrative law judge . . ." to review of "[a]ll final orders, awards, modifications of awards, or preliminary awards under K.S.A. 44-534a and amendments thereto made by the administrative law judge . . ."

The Appeals Board finds the Order, which is the subject of this appeal, is not a final order, award, modification of an award, or a preliminary hearing award as contemplated by K.S.A. 1997 Supp. 44-551(b)(1). The Appeals Board concludes the order is an interlocutory order made by the Administrative Law Judge during the litigation of a workers compensation case. It is an order that the Administrative Law Judge has authority to make during the trial process and the Appeals Board lacks jurisdiction to review the order until it is contained in a final order or award.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the claimant's appeal from the July 16, 1998, Order entered by Administrative Law Judge John D. Clark, should be, and is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of September 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: J. Greg Kite, Wichita, KS
Scott J. Mann, Hutchinson, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director